



# PUBLIC NOTICE

**FEDERAL COMMUNICATIONS COMMISSION**  
**445 12th STREET, S.W.**  
**WASHINGTON, D.C. 20554**

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**DA 00-690**  
**March 27, 2000**

## **Supplemental Closed Broadcast Auction No. 28 Closes**

### **Two Winning Bidders in the Auction of Certain LPTV and TV Broadcast Construction Permits**

Down Payments Due April 10, 2000  
Long-Form Application Amendments Due April 26, 2000

*Ten Day Petition to Deny Period for Full Power Television;*  
*Fifteen Day Petition to Deny Period for LPTV*

### **Report No. AUC-28-E (Auction No. 28)**

On March 24, 2000, the Federal Communications Commission completed the auction of two broadcast construction permits, raising (in net high bids) a total of \$1,210,000.00 for the U.S. Treasury. At the conclusion of the auction, there were two winning bidders acquiring a total of two broadcast construction permits.

This public notice provides detailed information concerning winning bidders, down payments, bid withdrawal payments and/or deposits, amendment filing requirements for FCC Forms 301 and 346 ("long-form applications") of winning bidders and other licensing matters. Key information appears in the following attachments:

**Attachment A:** "Round Results, High Bids" lists winning bidders and both the gross and net high winning bid amounts.

**Attachment B:** “Bidder Payment/Refund Report” lists down payments and withdrawal bid payments owed by winning bidders, if any.

A copy of this public notice will be sent via overnight mail to each winning bidder.

**Down payments.** The Commission's rules require that within ten business days after the release of this public notice, in this case, **by 6:00 p.m. ET on April 10, 2000**, winning bidders in the Supplemental Closed Broadcast Auction (Auction No. 28) must have on deposit with Mellon Bank in Pittsburgh, Pennsylvania, enough funds to cover all required down payments on winning bids. If a bidder's upfront payment is not sufficient to meet this requirement; the bidder must deposit additional funds. *See* 47 C.F.R. §§1.2107(b) and 73.5003(b).

The amount now due from each bidder, if any, is set out in the last column of **Attachment B**. *Note that only if a bidder's upfront payment covers the required total of down payments (as reflected in Attachment B) is no payment or FCC Form 159 necessary at this time.* Each bidder's down payment must be a total of twenty (20) percent of its net winning bid(s).

**Long-Form Applications.** Winning bidders must submit minor amendments to previously filed long-form applications within 30 days, by April 26, 2000. Winning bidders' long form applications, as amended, will be placed on public notice, triggering the appropriate period for the filing of petitions to deny. *See further discussion at pp. 6-7, infra.*

**Final payments.** After the termination of the pleading cycle for petitions to deny (*see* 47 C.F.R. §73.5006), the Commission will issue a public notice announcing that it is prepared to award the construction permits of the winning bidders whose applications are uncontested.<sup>1</sup> Within ten business days after the date of that public notice, uncontested winning bidders will be required to make full payment of the balance of their winning bids. *See* 47 C.F.R. §§1.2109 and 73.5003(c). Broadcast construction permits will be granted by the Commission following the receipt of full payment. The previously filed

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<sup>1</sup> In cases where petitions to deny are filed, no final payment public notice shall be issued for associated construction permits until the petitions have been reviewed. In such situations, final payment public notices shall be issued on a case-by-case basis. As each case is resolved, a separate final payment Public Notice shall issue if warranted.

long-form applications of the unsuccessful competing bidders will be dismissed following the grant of the winning bidder's construction permit.

**Method of payment.** All payments must be in U.S. dollars and made in the form of a wire transfer. No personal checks, credit card payments, or other forms of payment will be accepted. All payments must be accompanied by a completed FCC Remittance Advice Form (FCC Form 159).<sup>2</sup> If applicable, a partially completed copy of the FCC Form 159 will be sent along with this public notice to facilitate submission of the correct down payment. Questions regarding FCC Form 159 should be addressed to Michelle Bennett or Gail Glasser at 202-418-1995. **Please note, however, that winning bidders are ultimately responsible for insuring the verification and submission of the correct down payment from their bank to Mellon bank.**

**Wire transfer payments must be received by Mellon Bank by 6:00 p.m. ET, on April 10, 2000.** Bidders should coordinate with their bankers ahead of time regarding their wire transfers, and allow sufficient time for the wire transfer to be **initiated and completed prior to the deadline.** **As the Commission is not accountable for the acts of an applicant's bank, bidders are urged to confirm before the deadline that their wire transfer payments have been properly and timely transmitted by their bank to Mellon Bank.** To submit funds by wire transfer, bidders will need the following information:

ABA Routing Number 043000261  
Receiving Bank: Mellon Pittsburgh  
BNF: 911-6106  
OBI Field: (Skip one space between each information item)  
"AUCTIONPAY"  
TAXPAYER IDENTIFICATION NO. (same as FCC Form 159, Block 26)  
PAYMENT TYPE CODE (enter "A28D")  
FCC CODE 1 (same as FCC Form 159, Block 23A: "28")  
PAYOR NAME (same as FCC Form 159, Block 2)  
LOCKBOX NO: 358850

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<sup>2</sup> Copies of the FCC Form 159 may be obtained by calling the Commission's Forms Distribution Center at 1-800-418-3676 (outside Washington, D.C.) or 202-418-3676 (in the Washington area). Copies of the FCC Form 159 can also be obtained via the Internet (<http://www.fcc.gov/formpage.html>) or by Fax-On-Demand (202-418-2830).

Bidders must fax a completed FCC Form 159 to Mellon Bank at 412-209-6045 or 412-236-5702 at least one hour before placing the order for the wire transfer (but on the same business day).

Proper completion of the **FCC Form 159** is critical to ensuring correct credit of bidder deposits. **Bidders must use the same Taxpayer Identification Number used on their FCC Form 175.**<sup>3</sup> Questions concerning the calculation and submission of down payments should be directed to Michelle Bennett or Gail Glasser at 202-418-1995.

**Withdrawal, default and disqualification payments.** The Commission imposes payments on bidders that withdraw high bids during the course of an auction, or that default on payments due after an auction closes, or that are disqualified. *See* 47 C.F.R. §§ 1.2104(g), 1.2109(c), 73.5004(a). In Auction No. 28, there were no bid withdrawals during the course of the auction.

*Bid Default/Disqualification Payments.* If a high bidder defaults or is disqualified after the close of the auction, it will be subject to the following payment obligations: 1) the difference between the high bid and the amount of the winning bid the next time the construction permit is offered by the Commission, **plus** 2) a payment equal to 3 percent of the subsequent winning bid; however, if the subsequent winning bid exceeds the defaulting bidders bid amount, the 3 percent payment will be calculated based on the defaulting bidder's bid amount. With respect to the first component above, the difference between the defaulted and subsequent bid is determined by comparing the net defaulted bid with the subsequent net bid, or the difference between the gross defaulted bid and the subsequent gross bid, whichever is less.

Similarly, the calculation of the three-percent payment is based on the smaller of the two gross bids or smaller of the two net bids, whichever basis (gross or net) was used to figure the first component. Thus, if the difference between the gross bids is less than the difference between the net bids, the three-percent payment will be computed on the lower of the gross bids. If the difference between the net bids is less than or equal to the difference between the gross bids, the three-percent payment will be computed on the lower of the net bids. However, if the differences between both the gross bids and the net bids are less than or equal to zero, the three-percent payment will be computed on the lower of the net bids.

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<sup>3</sup> If, subsequent to final submission of its FCC Form 175, a bidder has provided the Commission with a written correction of its Taxpayer Identification Number, the bidder should use the corrected number.

If a winning bidder fails to remit the required down payment within ten (10) business days after the Commission has released this Public Notice, in this case, by 6:00 p.m. ET, on April 10, 2000, the bidder will be deemed to have defaulted, its application will be dismissed, and it will be liable for a default payment as described above. In such event, the Commission will offer the construction permit to the other bidder at its final bid amount.<sup>4</sup>

If a winning bidder fails to pay the balance of its winning bid(s) in a lump sum by the applicable deadline for final payments as specified by the Commission, it will be allowed to make payment within ten (10) business days after the payment deadline provided that it also pays a late fee equal to five (5) percent of the amount due. When a winning bidder fails to pay the balance of its winning bid plus late fee by the late payment deadline, it is considered to be in default on its construction permit(s) and subject to the applicable default payments. Construction permits will be awarded upon the full and timely payment of winning bids and any applicable late fees. *See* 47 C.F.R. §1.2109(a). A winning bidder that is found unqualified to be a licensee, fails to remit the balance of its winning bid in a timely manner, or defaults or is disqualified for any reason after having made the required down payment, will be deemed to have defaulted and will be liable for the payment set forth in Section 1.2104(g)(2). In such event, the Commission shall offer the construction permit to the other bidder at its final bid amount.<sup>5</sup>

Finally, bidders that are found to have violated the antitrust laws or the Commission's rules in connection with their participation in the competitive bidding process may be subject, in addition to any other applicable sanctions, to forfeiture of their upfront payment, down payment, or full bid amount, and may be prohibited from participating in future auctions. *See* 47 C.F.R. § 1.2109(d).

**Refund of excess upfront payments (for winning bidders).** Upfront monies on deposit that are in excess of the required down amounts will be refunded to the payor of record promptly upon receipt of the necessary wire transfer instructions. Winning bidders must fax the necessary wire transfer instructions to Michelle Bennett at 202-418-2843. Any questions concerning refunds should be referred to Michelle Bennett or Gail Glasser at 202-418-1995.

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<sup>5</sup> *See Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, First Report and Order* in MM Docket No.97-234, GC Docket No. 92-52 and GEN Docket No. 90-264, 13 FCC Rcd 15920 (1998) (“*Broadcast First Report and Order*”), at Para. 86.

<sup>5</sup> *Broadcast First Report and Order* at Para. 100.

**Refund of upfront payments (for non-winning bidders).** Non-winning bidders must fax the necessary wire transfer instructions to Michelle Bennett at 202-418-2843. Any questions concerning refunds for non-winning bidders should be referred to Michelle Bennett or Gail Glasser at 202-418-1995.

**Amendment to Long-Form Application.** By 7:00 p.m. ET on April 26, 2000, winning bidders must submit any necessary minor amendments to their previously filed long-form application(s) for markets in which they were the winning high bidder.<sup>6</sup> Long-form amendments (in hard copies) must be filed in accordance with 47 C.F.R. §73.3513, with the same number of copies as the originally filed long-form application. Amendments must be submitted to the Office of the Secretary, TW B204, 445 12<sup>th</sup> Street S.W. Washington, DC 20554. Winning bidders filing amendments may also send a courtesy copy of the amendment to Shaun Maher, Room 2-A820, at the same street address. In accordance with Commission rules, winning bidders may not submit amendments that constitute a major change from either the technical or legal proposal specified in the previously filed long-form application. Given the length of time that many long-form applications have been pending, winning bidders should take into account any relevant rule changes or procedural modifications in supplementing their long-form applications on file. For example, the Commission recently significantly modified its broadcast application and licensing procedures to eliminate unwarranted regulatory burdens.<sup>7</sup> The Commission has also established streamlined procedures regarding antenna structure registration.<sup>8</sup> The Commission also amended certain aspects of its guidelines for evaluating the effects of radio frequency (RF) electromagnetic emissions.<sup>9</sup> The additional requirements for updating the long-form applications do not apply to the electronic Form 175 short-form applications. Applicants are not required to update the Form 175 short-form applications at this time.

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<sup>7</sup> *Broadcast First Report and Order* at Para. 85.

<sup>8</sup> *See 1998 Biennial Regulatory Review – Streamlining of Mass Media Applications Rules and Processes, Report and Order*, MM Docket No. 98-43, 13 FCC Rcd 23056 (1998), *Memorandum Opinion and Order*, FCC 99-267 (rel. October 6, 1999).

<sup>8</sup> *See In the Matter of Streamlining the Commission's Antenna Structure Clearance Procedures and Revision of Part 17 of the Commission's Rules Concerning Construction, Marking and Lighting of Antenna Structures, Report and Order*, WT Docket No. 95-5, 11 FCC Rcd 4272 (1995).

<sup>9</sup> *See Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation, Second Memorandum Opinion and Order*, ET Docket No. 93-62, (rel. August 25, 1997).

Winning bidders' long-form applications, as amended, will subsequently be placed on public notice, triggering the period for the filing of petitions to deny. Petitions to deny the long-form application for a full power television construction permit must be filed within 10 days following issuance of the public notice announcing acceptance of the long-form application. Petitions to deny the long-form application for a low power television ("LPTV") construction permit must be filed within 15 days following issuance of an acceptance public notice. In the case of a full power television construction permit, an opposition must be filed 5 days from the filing date of the petition to deny and a reply is to be filed 5 days from the filing date of the opposition. For LPTV cases, oppositions must be filed 15 days from the filing date of the petition to deny and a reply must be filed 10 days from the filing date of the opposition. **Late-filed amendments will not be accepted without a showing of good cause.**

**Anti-collusion rules.** To ensure the competitiveness of the auction process, the Commission's rules prohibit applicants for the same MX Group from communicating with each other during the auction about bids, bidding strategies, or settlements. As explained more fully in the Public Notice announcing Auction No. 28,<sup>10</sup> this prohibition begins with the filing of short-form applications and ends on the down payment due date.<sup>11</sup> The prohibition ends on the down payment due date whether or not a high bidder must supplement its upfront payment to cover its down payment. By signing their FCC Form 175 short-form applications, applicants are certifying their compliance with Section 1.2105(c). Applicants that entered into joint bidding arrangements are reminded that a full, post-auction disclosure is required of the terms, conditions and parties involved in any bidding consortia, joint venture, partnership or other agreement or arrangement it entered into prior to the completion of bidding.<sup>12</sup>

**Additional Post-Auction Filing Requirements.** Section 73.5005(a) of the Commission's rules requires that post auction filings include the exhibits mandated by 47 C.F.R. § 1.2107(d) (concerning the terms, conditions and parties involved in any bidding consortia, joint venture, partnership or other agreement or arrangement the applicant had entered into relating to the competitive bidding process); 47 C.F.R. § 1.2110 (i) (concerning a description of how the applicant satisfies the eligibility requirements for designated entity status); and 47 C.F.R. § 1.2112 (a) and (b) (concerning disclosure of

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<sup>10</sup> "Supplemental Closed Broadcast Auction, Auction No. 28; Notice of Filing Requirements for Auction of certain AM, FM, LPTV, and TV Broadcast Construction Permits Scheduled for March 21, 2000; Minimum Opening Bids and Other Procedural Issues," *Public Notice*, DA 99-2958 (rel. December 23, 1999).

<sup>11</sup> *See id.* at 4-5.

<sup>13</sup> *See* 47 C.F.R. § 1.2107(d).

ownership and real party in interest information). Where applicable, such exhibits must be filed as amendments to the previously filed long-form application and must be submitted by no later than April 26, 2000.

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**For further information, contact:**

News Media:

Meribeth McCarrick at 202-418-0654

Office of the Managing Director  
(Payment, FCC Form 159 and refund  
questions)

Michelle Bennett or Gail Glasser  
at 202-418-1995

Mass Media Bureau:  
Video Services Division  
Audio Services Division

Shaun Maher at (202) 418-2324  
Lisa Scanlan at (202) 418-2700

Wireless Telecommunications Bureau,  
Auctions and Industry Analysis Division  
(Auction-related questions)

Bob Reagle, Auctions Analysis  
at 717-338-2888; Ruby Hough at 202-  
418-0660

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